

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

LEONARD SHACK,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO.
)	2:19cv402-MHT
)	(WO)
ALABAMA DEPARTMENT OF)	
CORRECTIONS, et al.,)	
)	
Defendants.)	

OPINION

Pursuant to 42 U.S.C. § 1983, plaintiff, a state prisoner, filed this lawsuit complaining that correctional officers failed to protect him from assault by another prisoner and that he has not received necessary treatment for a serious eye injury he received during that attack. This lawsuit is now before the court on the recommendation of the United States Magistrate Judge that plaintiff's claims against the Alabama Department of Corrections and the State of Alabama be dismissed due to the State's Eleventh Amendment immunity. There are no objections to the

recommendation. After an independent and de novo review of the record, the court concludes that the magistrate judge's recommendation should be adopted to the extent that the claims against the Alabama Department of Corrections and the State of Alabama be dismissed. However, the court does not adopt the recommendation that the dismissal be pursuant to 28 U.S.C. § 1915(e)(2)(B)(i), which only provides for the dismissal of "case[s]," not claims, and for dismissal when "the action" is "frivolous or malicious." 28 U.S.C. § 1915(e)(2)(B)(i) ("[T]he court shall dismiss the case at any time if the court determines that ... the action ... "is frivolous or malicious."). This action is not frivolous or malicious.

An appropriate judgment will be entered.

DONE, this the 20th day of September, 2019.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE